

### REMARKS

Applicant respectfully requests entry of the amendments and remarks submitted herein. Claims 1 and 3 have been amended for clarification purposes, and claims 5-15 and 18 have been canceled without prejudice to continued prosecution. Claims 1-4 and 16, 17, and 19-26 are currently pending. Reconsideration of the pending application is respectfully requested.

#### Objections to the Specification

The specification stands objected to because of the use of the trademarks "Greenies®," "Milkbones®," "Friskies®," "Whiskas®," and "Pounce®" in the application. The Examiner suggested that they be accompanied by generic terminology.

Applicant can find no generic descriptions of the indicated trademarked products and believe that the compositions are likely proprietary. Applicant has amended the specification, however, to include the name and the location of the manufacturer of each product. In view of these amendments, Applicant respectfully requests that the objection to the specification be withdrawn.

#### The 35 U.S.C. §112 Rejections

Claim 18 stands rejected under 35 U.S.C. §112, second paragraph, as the Examiner asserted that the use of "Greenies®" is unclear and that, therefore, claim 18 is indefinite.

Without acquiescing to the Examiner's rejection, Applicant has canceled claim 18 without prejudice to continued prosecution. Therefore, Applicant respectfully submits that the rejection of claim 18 under 35 U.S.C. §112, second paragraph, is moot.

#### The 35 U.S.C. §101 Rejections

Claims 1, 3, and 4 stand rejected under 35 U.S.C. §101 because the Examiner asserted that those claims are directed to non-statutory subject matter. The Examiner asserted that claims 1, 3, and 4 are directed to a product found in nature and that the naturally occurring *S. perisca* sticks naturally contain flavors, vitamins, nutrients and antibiotics. This rejection is respectfully traversed.

Claims 1-4 have been amended herein to clarify that the claimed medicines, vitamins, nutrients, or flavors are exogenously added to the claimed *S. persica* stick. It is clear from the specification that Applicant is referring to exogenously added flavors, vitamins, nutrients and antibiotics. See, for example, page 7, lines 13-16 of the specification, which states “[f]avorings, medicines, vitamins, and/or nutrients can be applied topically to a *S. persica* stick, or the *S. persica* sticks can be soaked in a solution (e.g., aqueous or non-aqueous) containing the flavorings, medicines, vitamins, and/or nutrients.”

In view of the amendments and remarks herein, the *S. persica* sticks claimed in claims 1, 3 and 4 that contain flavors, medicines, vitamins or nutrients are not found in nature and are directed toward statutory subject matter. Therefore, Applicant respectfully requests that the rejection of claims 1, 3, and 4 under 35 U.S.C. §101 be withdrawn.

#### The 35 U.S.C. §102 Rejections

Claims 1, 3-8, 10, 11, 16, and 21 stand rejected under 35 U.S.C. §102(b) as the Examiner asserted that those claims are anticipated by prior art admitted by the Applicant in the specification. The Examiner asserted that on page 3 of the specification, Applicant admits that *S. persica* sticks are known products. This rejection is respectfully traversed with respect to the pending claims.

Applicant does not dispute that *S. persica* sticks have been known for a long time and, as disclosed in the specification, some human cultures have used these sticks in oral hygiene for a long time. The specification admittedly discloses a brief synopsis of the long history of *S. persica*, and Applicant has provided a large number of references directed toward *S. persica* in the Information Disclosure Statements filed in the instant application, many of which are cumulative to a number of other references.

To the best of Applicant's knowledge, however, *S. persica* sticks have never been provided with exogenously-added flavors, nutrients, vitamins, or medicines (e.g., antibiotics) and Applicant can find no disclosure in which *S. persica* sticks include any of the presently-claimed components (e.g., exogenous flavors, vitamins, nutrients, or medicines). Similarly, Applicant can find no disclosure regarding a product for chewing or ingestion by a companion animal that

contains a *S. persica* extract (claim 16), nor can Applicant find any disclosure regarding an oral hygiene product for animals that contains a *S. persica* extract (claim 21).

In view of the amendments and remarks herein, Applicant respectfully requests that the rejection of the pending claims under 35 U.S.C. §102(b) be withdrawn.

Claims 1, 3-7, 16, 21, and 26 stand rejected under 35 U.S.C. §102(b) as being anticipated by Almas (2002, *J. Contemp. Dental Practice*, 3(3):1-10). The Examiner asserted that this Almas reference teaches the use of *S. persica* sticks and teaches that the sticks have antibacterial properties and are used to clean the teeth. The Examiner asserted that the intended use of the claimed sticks for animals does not render the claimed invention patentable unless there is a structural difference between the claimed invention and the prior art that is not taught or suggested by the prior art. Applicant respectfully traverses this rejection with respect to the pending claims.

Almas (2002) discloses a similar history of *S. persica* as that disclosed in Applicant's specification, and the research and results portion of Almas is directed toward a comparison of different anti-plaque agents (e.g., CHX vs. miswak extract). Almas does not teach or suggest, in either the background section or the research and results portion, that *S. persica* sticks can include exogenously-added flavors, vitamins, nutrients, or medicines. In addition, Almas does not teach or suggest a product for chewing or ingesting by a companion animal that contains a *S. persica* extract or an oral hygiene product for a companion animal that contains a *S. persica* extract. In view of the amendments and remarks herein, Applicant respectfully requests that the rejection of claims 1, 3-7, 16, 21, and 26 under 35 U.S.C. §102(b) be withdrawn.

Claims 1, 3-7, 16, 21, and 26 stand rejected under 35 U.S.C. §102(b) as being anticipated by Almas et al. (1999, *Biomedical Letters*, 60:71-75). The Examiner asserted that this Almas et al. reference teaches that *S. persica* sticks have antibacterial properties and are used to clean the teeth. The Examiner asserted that page 71 of this Almas et al. reference teaches that the sticks naturally contain nutrients, flavors, and vitamins. As with the rejection above, the Examiner asserted that the intended use of the claimed sticks for animals does not render the claimed invention patentable unless there is a structural difference between the claimed invention and the

prior art that is not taught or suggested by the prior art. Applicant respectfully traverses this rejection with respect to the pending claims.

Almas et al. (1999) discloses a similar history of *S. persica* as that disclosed in Applicant's specification, and the research and results portion of Almas et al. is directed toward a comparison of the anti-microbial effects of *S. persica* bark extract vs. pulp extract vs. whole plant extract. Almas et al. does not teach or suggest, in either the background section or the research and results portion, that *S. persica* sticks can include exogenously-added flavors, vitamins, nutrients, or medicines. In addition, Almas et al. does not teach or suggest that a product for chewing or ingesting by a companion animal or an oral hygiene product for a companion animal can contain a *S. persica* extract. In view of the amendments and remarks herein, Applicant respectfully requests that the rejection of claims 1, 3-7, 16, 21, and 26 under 35 U.S.C. §102(b) be withdrawn.

Claims 1, 3-7, 16, 20-23, 25, and 26 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,009,886. The Examiner asserted that the '886 patent teaches using a *S. persica* extract to make rinses and toothpastes, and asserted that *S. persica* sticks would naturally contain nutrients, flavors, and vitamins. Applicant respectfully traverses this rejection with respect to the pending claims.

The '886 patent is directed toward methods of making and using a dentrifice composition (a paste, a gel, a powder, a rinse, or the like) that contains microfibers and/or micro-sized particles of branches and roots of *S. persica*. The '886 patent does not teach or suggest that *S. persica* sticks can include exogenously-added flavors, vitamins, nutrients, or medicines. Similarly, the '886 patent does not teach or suggest a product for chewing or ingesting by a companion animal or an oral hygiene product for a companion animal that contains a *S. persica* extract. In view of the amendments and remarks herein, Applicant respectfully requests that the rejection of the pending claims under 35 U.S.C. §102(b) be withdrawn.

#### The 35 U.S.C. §103 Rejections

Claim 8-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Almas; claims 1-3, 5, and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Almas in

view of U.S. Patent No. 5,033,410; claims 8-15 and 21-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,009,886; claims 1-3 and 5-7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,009,886 in view of U.S. Patent No. 5,033,410; and claims 16-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,009,886 in view of U.S. Patent No. 4,145,447. The Examiner asserted that the length of the stick is a result effective parameter that a person of ordinary skill in the art would routinely optimize and that it would have been customary for an artisan or ordinary skill to determine the optimal stick length in order to best achieve the desired oral care results. The Examiner also combined references disclosing *S. persica* with references disclosing a type of animal chew, and asserted that it would have been obvious to combine the references to make a flavored stick. The Examiner further asserted that the reasonable expectation of success would motivate the artisan to modify the references in this manner. Applicant respectfully traverse these rejections with respect to the pending claims.

“To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Further, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). MPEP §2142 teaches that “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

As discussed above, Almas (2002), Almas et al. (1999), and the '886 patent discloses using *S. persica* sticks, microfibers, micro-sized particles, and extracts in various aspects of oral hygiene. In addition, the '410 patent discloses a knotted woven rope for animals to chew on, and the '447 patent discloses an animal chew made from compacted animal feed. None of the cited references, alone or in combination, teach or suggest the desirability of an exogenously-flavored *S. persica* stick or a *S. persica* stick containing exogenously-added medicines, vitamins, and/or nutrients. Similarly, none of the cited references, alone or in combination, teach or suggest a

product for chewing or ingesting by a companion animal or an oral hygiene product for a companion animal that contains a *S. persica* extract.

The claimed invention is not obvious in view of the cited references, and the Examiner has not presented a convincing line of reasoning as to why the claimed invention is obvious. In view of the amendments and remarks herein, Applicant respectfully requests that the rejection of claims 1-3, 5-17, 19, and 21-24 under 35 U.S.C. §103(a) be withdrawn.

#### Double Patenting

Claims 1, 3-7, and 15-26 are provisionally rejected on the grounds on non-statutory obviousness-type double patenting as being unpatentable over claims 1-12 of co-pending Application No. 10/872,689.

Applicant respectfully requests that the obviousness-type double patenting rejection be held in abeyance until allowable subject matter has been identified. After allowable subject matter has been identified, Applicant will submit a Terminal Disclaimer.

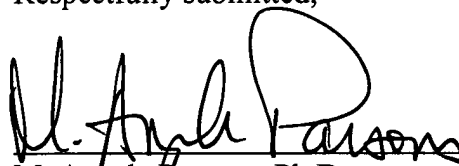
#### CONCLUSION

Enclosed is a \$225 check for the Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

May 8, 2006

  
M. Angela Parsons, Ph.D.  
Reg. No. 44,282

Fish & Richardson P.C., P.A.  
60 South Sixth Street, Suite 3300  
Minneapolis, MN 55402  
Telephone: (612) 335-5070  
Facsimile: (612) 288-9696